

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

PERCY TWAIN BARBER, AND WIFE
MARIA BARBER

CLAIMANT,

V.

**S.D.B. DEVELOPMENT, L.P., A
TEXAS LIMITED PARTNERSHIP,
PRESIDENT STEPHEN D. BROWN**

&

THOMAS J. BURBANK, P.C.
ATTORNEY THOMAS J. BURBANK

[illegible]

CIVIL ACTION No. 1:21-cv-00539

DEFENDANTS' JURY QUESTIONS AND INSTRUCTIONS

QUESTION NO. 1:

Are the Law Offices of Thomas J. Burbank and Thomas J. Burbank debt collectors under the Federal Fair Debt Collections Practices Act (FDCPA)?

You are instructed that a “debt collector under the FDCPA is any person who uses any instrumentality of interstate commerce or the mail in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.’ 15 U.S.C. §1692a(6). Whether a party “regularly” attempts to collect debts is determined , of course, by the volume or frequency of its debt collective activities.” *Garrett v. Derbes*, 110 F.3d 317, 318 (5th Cir. 1997); *Brown v. Morris*, 243 Fed Appx. 31 (5th Cir. 2007).

You are further instructed that conducting a non-judicial foreclosure by an attorney is not considered debt collection under the FDCPA, and foreclosing under a deed of trust is not the collection of a debt within the meaning of the FDCPA, unless other actions are taken beyond these necessary to foreclose under the deed of trust, and were taken in an effort to collect a debt. *Brown v. Morris*, 243 Fed. Appx. 31, 36 (5th Cir. 2007).

You are further instructed a trustee or substitute trustee is not a debt collector. Tex. Prop. Code §51.0075(b).

Answer "Yes" or "No" for each Defendant named below:

- 1) Law Office of Thomas J. Burbank _____
- 2) Thomas J. Burbank _____

If you answered Question No. 1 "Yes," for either Thomas J. Burbank or the Law Offices of Thomas J. Burbank, or both, answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 2:

Did either or both of the Defendants had a present right to possess Plaintiffs' home by violating the certified mail requirements of the Texas Property Code?

You are instructed that if Plaintiffs transferred the ownership of the real estate at issue located at 9015 McLean, Beaumont, Texas 77707 to the Percy Ptah El Express Trust through a General Warranty Deed signed on September 28, 2021, then Defendants did not have a present right to possess Plaintiffs' home.

You are further instructed that the Texas Property Code provides in Section 51.002 that: (1) notice of the non-judicial foreclosure must be given at least twenty-one (21) days before the date of the sale by serving written notice of the sale by certified mail on the debtors obligated to pay the debts. Section 51.002(b) & (b)(3).

You are further instructed that service of a notice by certified mail is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor at the debtor's last known address. Section 51.002(e).

Answer "Yes" or "No" for each of the Defendants.

- 1) Law Offices of Thomas J. Burbank _____
- 2) Thomas J. Burbank _____

If you answered Question No. 1 "Yes," for either Thomas J. Burbank or the Law Offices of Thomas J. Burbank, or both, answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 3

Did either or both of the Defendants have a present right to possess Plaintiffs' home with respect to whether the Plaintiffs were actually in default on their mortgage payments?

You are instructed that if Plaintiffs transferred the ownership of the real estate at issue located at 9015 McLean, Beaumont, Texas 77707 to the Perry Ptah El Express Trust through a General Warranty Deed signed on September 28, 2021, then Defendants did not have a present right to possess Plaintiffs' home.

Answer "Yes" or "No" for each of the Defendants.

- 1) Law Office of Thomas J. Burbank _____
- 2) Thomas J. Burbank _____

If you answered Question No. 1 "Yes," for either Thomas J. Burbank or the Law Offices of Thomas J. Burbank, or both, answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 4

Did either or both of the Defendants foreclose on Plaintiffs' home when Plaintiffs were not in default and/or failing to comply with the certified mail notice requirements of the Texas Property Code?

You are instructed that this Court's jury instructions previously given to you for jury questions numbers 1, 2, and 3 equally apply to this Question No. 4.

Answer "Yes" or "No" for each of the Defendants.

- 1) Law Office of Thomas J. Burbank _____
- 2) Thomas J. Burbank _____

If you answered Question No. 1 "Yes," for either Thomas J. Burbank or the Law Offices of Thomas J. Burbank, or both, answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 5

Did either or both of the Defendants cause Plaintiffs to incur any compensatory damages, which is defined as their financial or economic losses, if any, due to either or both of the Defendants' violations of the FDCPA, if any?

You are instructed that if either or both of the Defendants are not debt collectors under the law given by this Court, then these Defendants cannot be held liable for any of the Plaintiffs' compensatory damages. You are further instructed even if you find that either or both of the Defendants are debt collectors, a debt collector's violations that are not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error, cannot be held liable in damages. 15 U.S.C. §1692k(c).

Answer "Yes" or "No" for each of the Defendants.

- 1) Law Office of Thomas J. Burbank _____
- 2) Thomas J. Burbank _____

If you answered “Yes” for either the Law Office of Thomas J. Burbank or Thomas J. Burbank, or both then answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 6

How much money if paid now in cash, would fairly and reasonably compensate Plaintiffs for their economic or financial damages, if any, caused by one or both of the Defendants?

Do not add interest on any amounts of damages you award, if any.

Plaintiffs \$_____

CERTIFICATE

We the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror, if unanimous.)

PRESIDING JUROR

(To be signed by those rendering the verdict, if not unanimous.)

1.) _____

2.) _____

3.) _____

4.) _____

5.) _____

6.) _____

7.) _____

8.) _____

9.) _____

10.) _____

11.) _____

(Optional)